MAY 29 PAGE 7

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-6290

GLEN D. DUPRIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

REPLY BRIEF OF PETITIONER

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Attorney for Petitioner

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This brief is submitted in order to respond to the arguments made by the United States and the Cheyenne River Sioux Tribe in their briefs in opposition to the Petition for Writ of Certiorari. As is explained below, these arguments are not persuasive and do not reduce the strength of the reasons for granting the writ set forth in the Petition. While the Government has filed a motion to dismiss the criminal charges in this matter, this motion has not yet been ruled upon by the District Court. Therefore, although counsel for the petitioner does not wish to press needless arguments, the jurisdictional issue must be fully presented to the Court in order to protect the rights of the petitioner and to pursue every available defense on his behalf.

I. THE ARGUMENTS OF THE UNITED STATES AND THE TRIBE ON THE ISSUE OF DISESTABLISHMENT ARE NOT PERSUASIVE IN LIGHT OF UNAMBIGUOUS CONGRESSIONAL INTENT AND THE DECISIONS OF THIS COURT.

The United States places heavy emphasis on the purported existence of ambiguities in the statutory language and legislative history and restates the rule that doubtful expressions are to be resolved in favor of the Indians. See Brief of United States at 6; Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 586 (1977); McClanahan v. Arizona State Tax Commission, 411 U.S. 164, 174 (1973). However, it must be remembered that the rule is simply a "canon of construction" and "is not a license to disregard clear expressions of ... congressional intent. DeCoteau v. District County Court, 420 U.S. 425, 447 (1975). In the instant case as stated in the Petition, the evidence taken as a whole is overwhelming and demonstrates an unmistakable congressional intent to disestablish the portion of the original Cheyenne River Reservation affected by the Act of May 29, 1908, 35 Stat. 460.

The United States attempts to minimize the importance of the express language of the Act in question. It first discounts the significance of the school lands provision found in Section 7 of the Act, despite the emphasis placed on identical provisions in Rosebud Sioux Tribe v. Kneip, supra at 599-601. The "obvious" rationale for the provision asserted by the Government, Brief of United States at 7 n.6, is imaginative but has no support in any of the legislative material. What is in fact obvious is that the reason for the provision is precisely the same as that stated in Rosebud. Here, as in Rosebud, the House Report explicitly stated the reason for the provision: "Sections 16 and 36 are reserved as school lands for the States of North Dakota and South Dakota, which is in accordance with the enabling acts of

these States." [1] The conclusion drawn by this Court with respect to similar legislative material regarding the 1904, 1907, and 1910 Rosebud Acts was that

> Congress, therefore, clearly thought that it was acting pursuant to § 10 of the Act of February 22, 1889, and not sub silentio adding an additional grant for school lands located within a continuing reservation. The far more natural construction, then, is to read a congressional intent to disestablish [the affected area].

Rosebud, supra at 600-01 (emphasis added). [2]

Similarly, the arguments of the United States and of the Cheyenne River Tribe regarding the liquor provision, added to the 1908 Act by subsequent amendment, are misleading. See Brief of United States at 7 n.6; Brief of Tribe at 17-18.

1/ The following exchange during the debate of the bill in the House is also helpful in interpreting the provisions:

> MR. FINLEY. ... In Section 7 of the bill it provides that sections 16 and 36 are to be reserved for school purposes.... When the State of South Dakota was made a State, was or not the State of South Dakota given school lands or lieu lands for school purposes to correspond with the amount of Indian lands held by Indians in reservations like this?
>
> ....
>
> MR. SHERMAN. A provision was made in the enabling act that the United States grant to the States sections 16 and 36 for school purposes.
>
> ....
>
> MR. HALL. I will say that the enabling act under which South Dakota, North Dakota, Washington, and Montana were admitted - it was an omnibus bill - provided for the granting in presenti of sections 16 and 36 for school purposes, and then it provided that grant of these sections for school purposes be held in abeyance until the reservation was opened.

42 Cong. Rec. 7005 (1908).

2/ The statements of the United States regarding the issues in the Rosebud case are incorrect. The reservation was not disestablished by a 1901 act, and the question involved was whether the reservation was diminished by three separate statutes: A 1904 Act (incorporating the terms of an unratified 1901 agreement), a 1907 Act, and a 1910 Act. The Court arrived at the same conclusion regarding the school lands provision in all three Acts. 430 U.S. at 599-601, 608 n.36, 613.

The 1910 request by the Indians for a ban on intoxicants was made in the context of different proposed legislation which was designed to open up the remainder of the original reservation left unopened by the 1908 Act. See Letter from Secretary of the Interior to Chairman of Senate Committee on Indian Affairs (April 5, 1910), reproduced in S.Rep. No. 518, 61st Cong., 2d Sess. at 4 (1910). [3] Since the entire diminished reservation was affected by this opening, and probably would be disestablished as a result, it is only logical that the Indians would request that the bill include a liquor ban covering "any part of the present reservation." Id. The liquor provision added to the 1908 Cheyene River Act is nearly identical to that included in the 1910 Rosebud Act which has been fully interpreted by the Court in Rosebud, supra at 613-15 and n.47. Moreover, the legislative history of the provision clearly shows that it was adopted for precisely the same reasons explained in Rosebud. [4] See 45 Cong. Rec. 1769-70 (1910); H.R.Doc. No. 711, 61st Cong., 2d Sess. (1910).

The Government's brief dismisses the "diminished" and "public domain" language of the statute without explanation. Brief of United States at 7 n.6. The use of these terms, however, is the clearest evidence of a congressional intent

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3/ This letter does contain references relevant to the question at hand. The unopened portion of the original reservation is described as the "diminished part of the reservation," and as comprising "all of the Cheyenne River Reservation." S.Rep. No. 591, 61st Cong., 2d Sess. at 4-5 (1910) (emphasis added).

4/ In a letter to the Speaker of the House recommending such a provision, the Secretary of the Interior stated that the suggested legislation was "similar" to that affirmed in Dick v. United States, 208 U.S. 340 (1908). See H.R. Doc. No. 711, 61st Cong., 2d Sess. at 1 (1910). The provision considered in the Dick case, as explained in Rosebud, supra at 613-15 n.47, was a liquor ban pertaining to lands which were ceded by Indians and thereby removed from the coverage of the Act of July 23, 1892 prohibiting the introduction of liquor into Indian country. See Dick, supra at 352-54.

to disestablish the opened portion of the reservation. If Congress had intended that the reservation continue to extend to its 1889 boundaries, it certainly would not have referred to it as "diminished." 5/ Cf. Rosebud, supra at 613-14; Seymour v. Superintendent, 368 U.S. 351, 354 (1962). Moreover, there is no merit in the assertion of the Government that the reference in the 1908 Act to the opened lands as being "part of the public domain" does not indicate disestablishment intent. This Court has consistently interpreted the restoration of land to the public domain to be synonymous with disestablishment. Rosebud, supra at 589 and n.5; DeCoteau v. District County Court, 420 U.S. 425, 448-49 (1975); Seymour, supra at 353, 354-55.

The contrary arguments made by the Government and the Tribe are not persuasive. Both point to the asserted lack of a formalized agreement between the Indians and the Government. Brief of United States at 9; Brief of Tribe at 14-15. However, this argument has been fully disposed of by this Court in Rosebud:

> although the Acts of 1904, 1907, and 1910 were unilateral Acts of Congress without the consent of three quarters of the members of the tribe required by the original treaty, that fact does not have any direct bearing on the question of whether Congress by these later Acts did intend to diminish the reservation boundaries. By the time of the first of these Acts, in 1904, Congress was aware of the decision of this Court in Lone Wolf v. Hitchcock, 187 U.S. 553 (1903), which held that Congress possessed the authority to unilaterally later the provisions of an Indian treaty.

5/ Despite the plain and ordinary meaning of the word, the Tribe suggests that to "diminish" a reservation is not to decrease its size but to alter the status of some of its land. Brief of Tribe at 17. This fanciful construction, however, does not comport with this Court's own understanding and use of this term in similar contexts. See Rosebud, supra at 585, 586, 587, 588, 592, 594, 597, 598, 611, 613; DeCoteau v. District County Court, 420 U.S. 425, 447 (1975); Seymour v. Superintendent, 368 U.S. 351, 354 (1962).

Rosebud, supra at 587-88. See also id. at 593-94, 598, 607 n.32. As in Rosebud, Congress was aware that it was acting pursuant to its plenary power affirmed in Lone Wolf:

> Although Congress has the plenary power to open the lands independent of the consent or agreement of the Indians, it has been thought wise to consult their wishes and conform thereto as nearly as may be consistent with their own interest and the welfare of the people as a whole.

S.Rep. No. 439, 60th Cong., 1st Sess. at 4 (1908); H.R.Rep. No. 1539, 60th Cong., 1st Sess. at 3 (1908). See also S.Rep. No. 439, supra, Pt. 2 at 4-5, 18; H.R.Rep. No. 1539, supra at 8-9, 22. Cf. S.Rep. No. 68, 61st Cong., 2d Sess.(1910) (similar provision regarding 1910 Rosebud legislation). Furthermore, as in Rosebud, some form of unwritten agreement was reached with the members of the Tribe. See S.Rep. No. 439, supra at 4.

The Tribe also relies on the absence of explicit language of cession in the 1908 Act. Brief of Tribe at 15. However, since there was no actual "cession" involved in the strict meaning of the word, see Rosebud at 597, the absence of such language is not relevant. There is, for instance, no such language in the 1907 Rosebud Act found by this Court to have the effect of disestablishment. See Rosebud at 608-09. Moreover, the numerous references to the "cession" of the lands in question, contained in Indian Inspector McLaughlin's report of his conferences with the Indians - which is expressly made a part of both the House and Senate Reports - indicate that it was understood at the time that the Act would have the same effect as a cession by the Indians. See S.Rep. No. 439, Pt. 2, 60th Cong., 1st Sess. (1908); H.R.Rep. No. 1539, 60th Cong., 1st Sess. at 5-28 (1908).

The Tribe seems to argue that because the Secretary of the Interior was authorized to reserve certain lands for agency, school, and religious purposes, that these areas remained a part of the reservation and it would have been inconsistent to have disestablished other portions opened to settlement. If this is indeed the Tribe's interpretation, it is incorrect. The purpose of the 1908 Act was clearly to disestablish all lands within the portion of the original reservation affected by the Act. The provision in question simply reserves some lands from sale to homesteaders, just as the preceding provision reserves sections 16 and 36 from sale so that the necessary school lands grants could be made to the States. In addition, an identical provision appears in the 1910 Rosebud Act which was held in Rosebud to disestablish the area affected by the Act. Similarly, the fact that coal lands were reserved from allotment or disposition (Brief of Tribe at 16), is irrelevant to the issue of disestablishment. Similar provisions in the 1910 Pine Ridge and Rosebud Acts reserved timber lands to the use of the Indians. § 4, Act of May 27, 1910, 36 Stat. 440 (Act construed in United States ex rel. Cook v. Parkinson, 525 F.2d 120 (8th Cir. 1975), cert. denied, 430 U.S. 982 (1977); § 4, Act of May 30, 1910, 36 Stat. 448.

As stated in the Petition, the legislative history of the 1908 Act leaves no room for doubt as to the intended effect of the Act. The lack of references to the effect of the Act in the congressional debates is simply indicative of the fact that it was commonly understood that the legislation would disestablish the opened area. United States v. A Juvenile, 453 F. Supp. 1171, 1189 (D.S.D. 1978). See United States v. Dupris, 612 F.2d 319 (8th Cir. 1979) (McMillian, J., dissenting).

This understanding is plainly evident from the text of the Senate Reports which contain references to the "reservations as diminished" and "the reduced reservations," and in the additional material made a part of both committee reports, which includes unequivocal references to the cession of lands, new boundary lines, and diminished reservations. See S.Rep. No. 439, 60th Cong., 1st Sess. at 4-5, and Pt. 2, passim (1908); H.R.Rep. No. 1539, 60th Cong., 1st Sess. at 3, 5-28 (1908).

The foregoing does not stand alone, however. The legislative history must be read in the context of other surplus land acts passed during the same period affecting other reservations in South Dakota. See Act of March 2, 1907, 34 Stat. 1230 (Rosebud Reservation); Act of May 27, 1910, 76 Stat. 440 (Rosebud Reservation); Act of May 30, 1910, 36 Stat. 448 (Pine Ridge Reservation). These three statutes are virtually identical in substance and language to the 1908 Cheyenne River Act, and each has been found to have disestablishment effect. See Rosebud, supra; United States ex rel. Cook v. Parkinson, 525 F.2d 120 (8th Cir. 1975), cert. denied, 430 U.S. 982 (1977). The arguments pressed by the United States and the Tribe are therefore not only based on a strained reading of the Act and its history, but on the purely speculative assertion that, despite evidence to the contrary, Congress intended a completely different result from that of other acts of the period utilizing the same language. While it is true, as the Government notes, that each act of this type must be examined separately, the scope of the judicial inquiry mandated by the decisions of this Court requires a broad examination of the circumstances surrounding the passage of the Act. Rosebud, supra at 587; DeCoteau, supra at 444. Therefore, the Act in question must be examined against the background provided by these other similar statutes affecting nearby reservations. See United States v. Dupris, supra at 336 (McMillian, J., dissenting).

The arguments of the Government and the Tribe regarding the subsequent jurisdictional history of the area in question are also without merit. As explained in the amicus brief of the State of South Dakota, et al., the State and Counties exercised continuous jurisdiction over the area in question until the 1973 decision of the Eighth Circuit in United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973). Brief of South Dakota et al. at 13-14. See United States v. Dupris, supra at 338-39 (McMillian, J., dissenting). In addition, the statement of the Tribe that "[w]ithout exception those areas previously opened to settlement by the 1908 legislation have been consistently administered by the federal government and the Tribe as part of the Cheyenne River Reservation" Motion of Tribe at 2, is simply untrue. The absence of federal jurisdiction in the area opened in 1908 was recognized very early, as evidenced in the following passage from the 1911 report of the Superintendent of the Cheyenne River Agency:

> The law opening this reservation practically created a community without law or officers to enforce the law, as it left the open land outside of the allotments beyond my jurisdiction and nearly a year passed before there was any semblance or assumption of jurisdiction by the state or county organizations.

Annual Report of Supt. of Cheyenne River Agency, Section I, No. 3, "Maintenance of Order", at 1 (1910) (copy attached hereto as Appendix A) (emphasis added).[6/] Moreover, if the

6/ Other documents of the Department of the Interior reflect the same understanding. For example, a 1912 letter from the Agency Superintendent describes boundaries of the reservation "prior to the opening" and then describes the "boundaries of the present diminished reservation." Letter of Superintendent of Cheyenne River Agency to P. Norbeck (August 12 1912) (copy attached hereto as Appendix B). Another letter from the Superintendent in 1913 refers to the application of state law to both "the ceded part of the reservation" and "the present diminished reservation." Letter of Superintendent of Cheyenne River Agency to Attorney General of South Dakota (February 13, 1913) (copy attached hereto as Appendix C). In addition, a 1929 letter from the Secretary of the Interior refers to the opened land as the "former" reservation. Letter from Secretary of the Interior to Rep. William Williamson (July 29, 1929) (a copy attached hereto as Appendix D).

federal government had exercised general criminal jurisdiction, it would have done so in contravention of the decision of the United States District Court in United States v. LaPlant, 200 F. 92 (D.S.D. 1911). This is not to say that the federal government exercised no jurisdiction in the area, for it certainly involved itself in the enforcement of federal criminal laws, such as those relating to the sale of liquor (see, e.g., Act of January 30, 1897, 29 Stat. 506), and to theft of government property (see 18 U.S.C. 641), in reservation and non-reservation areas alike. Also, a considerable portion of the area in question was initially held as Indian allotments, which were "Indian country" for jurisdictional purposes and which would therefore have been subject to federal jurisdiction even though outside the reservation. See United States v. Dupris, supra at 339-40 (McMillian J., dissenting); United States v. A Juvenile, supra at 1200. See generally United States v. Pelican, 232 U.S. 442, 447 (1914); 18 U.S.C. 1151(c). In addition, the federal government has extended programs and benefits to Indians in the opened area, but, as explained in the opinion of the District Court, this fact is not germane to the issue of disestablishment. United States v. A Juvenile, supra at 1176, 1200-01.

Furthermore, in 1941 and 1952 undisposed of-lands in the opened area were restored to reservation status by the Department of the Interior under Sections 3 and 7 of the Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. § § 461 et seq. (Indian Reorganization Act). Order of Restoration, 41 Fed. Reg. 4903 (1941); Order of Restoration, 52 Fed. Reg. 1065 (1952). Those lands are referred to in the orders as part of the "former" reservation and the "ceded" lands. The Department of the Interior clearly considered the lands opened by the 1908 Act to be outside the reservation; otherwise it would have made no sense to have expressly added portions of the opened area to the existing reservation under § 7 of the Indian Reorganization Act.

The Tribe cites several statutes which it claims are representative of congressional recognition of the reservation status of the lands opened by the 1908 Act. Brief of Tribe at 20 n.5. To the extent that subsequent statutes are relevant to the issues at hand, it should be noted that numerous statutes clearly indicate an understanding that the reservation was in fact diminished.[7/] See, e.g., Act of April 13, 1912, 37 Stat. 84; Act of April 25, 1922, 42 Stat. 499; Act of March 3, 1925, 43 Stat. 1184; Act of March 31, 1928, 45 Stat. 400; Act of February 14, 1931, 46 Stat. 1107. Cf. Rosebud, supra at 604-05 n.27 ("often contradictory" history of "little force").

II. A CONFLICT EXISTS BETWEEN THE DECISIONS OF THE EIGHTH CIRCUIT COURT OF APPEALS AND THE SOUTH DAKOTA SUPREME COURT.

The Government attempts to minimize the conflict existing between the opposite decisions of the South Dakota Supreme Court in Stankey v. Waddell, 88 S.D. 104, 256 N.W.2d 117 (1977) and of the Eighth Circuit in the instant case. Brief of United States at 9-10. Their suggestion that the South Dakota court will reverse itself is purely speculative, and the fact remains that a conflict in need of resolution does exist.

7/ The statutes referred to by the Tribe are not apposite. The Act of September 30, 1950 in no way relates to the lands in question. Other acts refer to the opened lands as "in the" reservation. In light of the unambiguous references to the "former reservation" in other statutes, it must be assumed that the above reference was a convenient geographical designation rather than a recognition of reservation status.

The two Interior Department documents cited by the Tribe are also not relevant. The 1909 reference to lands "within the" reservation was written before the actual sale of the opened lands, when the disestablished area was still administered by the federal government as if it were a reservation. See United States v. Pelican, 232 U.S. 443, 449 (1914). The 1910 letter simply refers to "Cheyenne River lands."

III. A CASE OR CONTROVERY BETWEEN THE PARTIES STILL EXISTS.

The Government also argues that the Petition should be denied because the United States Attorney has moved to dismiss the case against the petitioner, and states that such a denial "cannot adversely affect" the petitioner. Brief of United States at 4-5. This argument is without merit. Since the Government's motion has not yet been ruled upon by the District Court, and there is no guarantee that the court will grant the motion, any suggestion that the case is moot is also purely speculative. Until the case is dismissed with prejudice, the petitioner is still in jeopardy.

CONCLUSION

For the foregoing reasons, and the reasons expressed in the Petition for Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

David L. Bergren
P.O. Box 7
Fort Pierre, South Dakota 57532

Attorney for Petitioner

AFFIDAVIT OF SERVICE

I hereby certify that the foregoing Reply Brief of Petitioner was served this 27th day of May, 1980, by United States Mail, first-class postage prepaid, addressed to the Honorable Wade H. McCree, Jr., Solicitor General of the United States, Department of Justice, Washington, D.C. 20530.

William W. Shakely
William W. Shakely

Subscribed and sworn to before me this 27th day of May, 1980.

Gayle Farnsworth
Notary Public

My Commission Expires March 14, 1983

SECTION I--Law and Order

No. 3. Maintenance of Order.

Disorder upon the reservation during the year has consisted of the disturbances of the Indians on one side and troubles which have been caused by the whites on the other side. Last July, I found the Indians of this reservation practically without discipline, but immediate action to strengthen the authority of the police and courts and a little severe disciplining has brought conditions to a point where I feel there will be but little trouble in maintaining discipline among our own people except for such chronic cases as are found in every community. The chronic cases we arrest, try and commit to jail and when their time is up we look for their absence from jail to be very temporary.

The greatest diffuculty in maintaining order has been on account of the towns and the whites on the open part, and this divides itself into the disturbances in the towns and the depredations on stock and timber.

The law opening this reservation practically created a community without law or officers to enforce the law, as it left the open land outside of the allotments beyond my jurisdiction and nearly a year passed before there was any semblance or assumption of jurisdiction by the state or county organizations. Towns sprung up even before the lot sales and from the start until recently, gambling and drinking went on at a great rate. These features were eliminated during the last month of the year

by Special Officer D. L. Crowder, whose services as detective I obtained through Chief Special Officer Johnson. I cannot speak too highly of the most excellent work which was done by Mr. Crowder, as through his efforts, gambling and drinking has been practically eliminated. Many prosecutions for selling intoxicants will be had in the fall and the traffic in hard cider, which was probably the greatest annoyance, has been eliminated, so that we will go into the coming year with a set of towns probably as clean as on any reservation, and I believe they will remain so except for the occasional bootlegger whose audacity would lead him to peddle booze in heaven if the money gain seemed sufficient to justify the attempt.

The horse and cattle stealing and the timber stealing has been the most difficult with which to cope and along these lines the least has been accomplished. At the fall term of Court I will present to the Grand Jury quite a number of these cases, but that number will be insignificant compared with the terrible depredations on stock and timber which have been carried on during the year. The necessity of furnishing the Court with the most techinal evidence as to the actual taking of the property and the extensive territory over which these depredations have extended have rendered my regular force almost helpless to catch these people redhanded, while the many other duties and the time which would have been consumed in travel have made it equally impossible for the regular employees to run down the cases and develop the evidence. I know many of the stock thieves and their offences and a great many of the timber depredations and the persons by whom they were committed, but we are unable because of other duties and lack of special training along these lines to produce

the evidence necessary to convict. Request by telegram on June 27th, was made on the Office to continue Mr. Crowder's services for a few months so that constant hammering would insure us against the backsliding of the towns and principally to employ him in obtaining the necessary evidence to the stock and timber depredations. The remedy for all conditions on this reservation is to increase the police force to not less than thirty men including officers, and to allow the services of Mr. Crowder for a few months longer.

The difficulties on this reservation are due almost entirely to the manner in which it was opened for settlement, I would urge upon the Office either to find a better system for settling up the surplus lands on Indian reservations or, if the present method is to be followed, a more carefully prepared law which will not practically create, even temporarily, a territory without either law or officers for the enforcement of the law. As a suggestion, it occurs to me that the country would be better settled by a law that would permit the sale of surplus lands as we now sell inherited lands, the jurisdiction to be ceded to the state at such a time as the white settlement justifies such cession or, under the present form, a provision to be written into the law which will retain in the Indian service and its officers, absolute jurisdiction over the territory opened for settlement until such time as the Secretary of the Interior is satisfied that the state, counties and towns have established systems of local government and officers competent to enforce the law.

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE

Cheyenne River Agency, S. D.,
August 12, 1912.

Mr. Peter Norbeck,
Redfield, S. D.

Dear Sir:

I regret the delay in replying to your letter of the 24th ultimo, but press of work has made it impossible to take up your questions earlier.

The following refers only to the Cheyenne River Reservation, as I am unable to give you the desired information as to Standing Rock.

Prior to the opening, the reservation was bounded as follows:- Starting at the Missouri River at a point between townships 17 and 18, thence west along this line to a point 1½ mile west of the range line between ranges 17 and 18; thence south along this line to the Cheyenne River; thence along the Cheyenne River to the Missouri River, thence along the Missouri River to the point of starting.

About 40% of the reservation remained unopened.

The boundaries of the present diminished reservation are as follows:- Starting at the Missouri River at a point between townships 15 and 16, thence west along this line to the range line between ranges 24 and 25; thence south along this line to the township line between townships 9 and 10, thence west along this line to a point 1½ mile west of the line between ranges 17 and 18; thence south along this line to the Cheyenne River; thence along the Cheyenne River to the Missouri River, thence along the Missouri River to the place of starting.

Indian population June 30, 1912, was 2591.

To date, 3146 allotments have been approved, involving approximately 1,100,000.acres.

About 90% of the Indians have been allotted.

Trusting that the above information will answer your purpose, I am,

Very respectfully,

Superintendent.

RCC

Cheyenne River Agency, S. D.,
February 13, 1913.

The Attorney General,
Pierre, S. D.

Sir:

Your opinion is requested as to the application of the State herd law on the ceded part of the Cheyenne River Reservation and, also, upon the present diminished reservation.

The Department of the Interior, under date of July 25, 1912, issued regulations governing the use of vacant ceded Indian lands. A copy of said regulations is enclosed herewith. These regulations provide for the issuance of yearly grazing permits to persons for the grazing of stock on the unentered tribal ceded lands. Several permits, in accordance with these regulations, have already been issued.

The Department of the Interior has also ruled that the Indians, who hold allotments on these ceded lands, have the right to graze on the vacant ceded lands 100 head of horses or cattle or 500 head of sheep and that homesteaders, within this territory, may graze on the vacant Indian land 40 head of horses or cattle or 200 head of sheep.

The question now arises as to the application of the State herd law on these ceded lands, as it would appear to me that the

APPENDIX C

herd law, if enforced, would conflict with the regulations of the Department of the Interior above referred to.

The following questions in connection with this matter, I submit:

1. Will Indians in this territory who take advantage of the grazing privilege allowed be compelled to herd their stock on unentered tribal lands or will it be up to the homesteader to protect his property with fences?

2. Will the homestead entryman, within this territory, be required to herd his stock on the unentered tribal lands or will it be up to the Indian allottee within this territory to fence his allotment?

3. Will the holder of a permit, as contemplated by the enclosed regulations, be subject to the homestead entryman for damages caused by his stock or employees to unfenced homestead land.

I would, also, ask your opinion as to the application of the State herd law on the present closed or diminished reservation. Part of the closed reservation is within organized counties of the State and lands therein are constantly being sold and patents in fee issued to the purchasers. Can the purchasers of land within the diminished reservation demand the protection of the State herd

(3)

law?

We are contemplating an issue of live stock to certain Indians and it is important that we know the exact status of the Nord Law.

Very respectfully,

Ww.T

Superintendent.

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THE SECRETARY OF THE INTERIOR
WASHINGTON

JUL 23 1929

James
Richards
Moore
McDowell
Newman
Patterson
Feeney
Wm Lee
Pelham

2-9
Cheyenne River

Hon. William Williamson,

House of Representatives.

My dear Mr. Williamson:

I have your letter of July 18, 1929, concerning the restoration to homestead entry of lands within the former Cheyenne River Indian Reservation in South Dakota. Your letter asks, if lands which have come back to the Government's supervision on account of default in payments by purchasers, would be restored by the Secretary if petitions were submitted signed by residents of that locality who wish to file homesteads.

Lands within the former Cheyenne River and a portion of the Standing Rock Indian Reservations were opened to homestead entry on May 2, 1910, under authority of the act of May 29, 1908 (35 Stat. 460), which provides in part:

> ***And it is further provided that any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this Act, under such rules and regulations as the Secretary of the Interior may prescribe".

In accordance with this proviso the remaining undisposed of lands were withdrawn from entry for the purpose of sale on May 27, 1919, with five exceptions set out in letter to you from the Commissioner of the General Land Office under date of November 22, 1928. Your especial attention is called to exception No. 2 which reads as follows:

> "Lands which on May 26, 1919, were embraced in existing entries, may be reentered if such existing entries were thereafter canceled on contest, relinquishment or otherwise".

This appears to be the answer to your question so far as homestead

DEPT OF THE INTERIOR
RECEIVED
JUL [illegible] 1929
SEC'Y'S OFFICE,
[illegible]

COPY FOR SECRETARY'S OFFICE
To be always left on top.

entries are concerned. Any lands which were embraced in an entry at the date of the withdrawal for the purpose of sale may be reentered at any time after the cancellation of the entry. As no entry has been allowed for these lands since May 27, 1919, unless it came within the five exceptions, the land embraced in an entry which is canceled for nonpayment will be subject to reentry under exception No. 2 without any action by the Department.

However, where a purchase is canceled the land returns to its former status and is not subject to homestead entry, but only to sale at public auction at such time as the Department may direct such a sale to be held.

If the majority of the people in the vicinity of these lands, both white and Indian, desire the restoration to homestead entry of all the Cheyenne River and Standing Rock lands opened under the act of May 29, 1908, supra, it is believed that this can best be accomplished by an act of Congress as was done in the case of lands on the south half of the former Colville Indian Reservation in Washington. The opening act in that case provided for the withdrawal of the lands for the purpose of sale five years after the opening, or on September 4, 1921. By the acts of May 9, 1922 (42 Stat. 507), and May 17, 1926 (44 Stat. 558), the time has been extended to September 4, 1931.

Very truly yours,

(Sgd.) RAY LYMAN WILBUR